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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PARNELL COLVIN, Plaintiff, vs. M.J. DEAN CONSTRUCTION, INC, Defendant.	Case No. 2:20-cv-01765-APG-EJY **DEFENDANT'S MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO FRCP 12(f)** **(Oral argument requested)** Action filed on September 22, 2020

Pursuant to Federal Rule of Civil Procedure 12(f), Defendant M.J. Dean Construction, Inc. ("Defendant" or "M.J. Dean"), hereby moves to dismiss to strike portions of Plaintiff's First Amended Complaint ("FAC") filed by Plaintiff Parnell Colvin. This Motion is based on and supported by the following points and authorities, the FAC on file in this case and by any oral argument the Court may require or allow.

I.
INTRODUCTION

On January 5, 2021, the Court approved the parties' discovery plan and scheduling order, which stated that the last day for the parties to amend the pleadings and add parties was February 16, 2021.

On November 17, 2020, Defendant file a motion to dismiss causes of action 4 – 7 in Plaintiff's complaint. (ECF No. 7.) On April 07, 2021, the Court issued a report and recommendation, granting in part and denying in part Defendant's motion to dismiss. (ECF No.

19.) On April 27, 2021, the Court adopted the report and recommendation.

On May 18, 2021, Plaintiff filed his FAC, which included multiple references to "Defendant's Doe Employee(s) / Agent(s)." In light of the fact that the time to add new parties expired over 3 months ago, the Court should strike all references to "Doe Employee(s) / Agent(s)" in the FAC.

II.
ARGUMENT

A. THE COURT SHOULD STRIKE ALL REFERENCES TO "DOE EMPLOYEE(S) / AGENT(S)" IN PLAINTIFF'S FAC

Federal Rule of Civil Procedure 12(f) allows a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." *Id.* Moreover, Rule 15(a)(2), regarding the amendment of pleadings, directs that "[t]he court should freely give leave when justice so requires." "Courts may decline to grant leave to amend only if there is strong evidence of 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment, etc.'" *Sonoma Cnty. Ass'n of Ret. Emps. v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013).

In the present case, Plaintiff's FAC contains the following references to "Doe Employee(s) / Agent(s)":

> 50. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Mr. Gutierrez and each of the **Defendant's Doe Employee(s)/Agent(s)** were the agents and/or employees of Defendant M.J Dean and were doing the things hereinafter alleged, and were acting within the course and scope of such agency and employment, in furtherance of the profit-making business of all such Defendants.
>
> 51. Mr. Gutierrez and each of the Defendant's **Doe Employee(s)/Agent(s)** subjected Mr. Colvin to actions complained herein while in the course and scope of their agency and/or employment with M.J. Dean.
>
> 52. As a direct and proximate result of the actions by Defendant M.J. Dean and/or **Doe Employee(s)/Agent(s)** and each of

> them as set forth herein, Defendants, and each of them, are vicariously liable for the acts of the other, which caused Mr. Colvin to suffer damages, and he is entitled to be fully compensated therefore.

ECF 21, ¶¶ 50 – 52, emphasis added. Plaintiff asserts identical allegations to those above in paragraphs 59 – 61 and 69 – 71. *Id.*

Due to the fact that the time to add new parties has come and gone, the Court should strike all references to "Doe Employee(s) / Agent(s)" in the FAC.

IV.
CONCLUSION

Based on the foregoing, Defendant's Motion to Strike all references to "Doe Employee(s) / Agent(s)" in the FAC should be granted.

Dated: May 21, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed and served upon the following parties on May 21, 2021 through the Court's ECF system.

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